No. 05-128

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

HOWARD DELIVERY SERVICE, INC., Debtor, and the OFFICIAL COMMITTEE of UNSECURED CREDITORS of HOWARD DELIVERY SERVICE, INC.,

Petitioners,

v.

ZURICH AMERICAN INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONSE

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CORPORATE DISCLOSURE STATEMENT

The respondent is Zurich American Insurance Company. Its parent corporations are Zurich Holding Company of America, Inc., Zurich Insurance Company, Crown Management Services Limited, Zurich Group Holding, Zurich Financial Services, and Allied Zurich p.l.c.

No publicly held company owns 10% or more of respondent's stock.

RESPONSE TO PETITION FOR *CERTIORARI*

Zurich does not oppose *certiorari*.

Respondent Zurich American Insurance Company acknowledges that the Fourth Circuit's decision in this case has contributed to a widening split of authority among the Circuit Courts of Appeals on the question whether prepetition claims for unpaid workers' compensation insurance premiums are entitled to priority under former section 507(a)(4) of the Bankruptcy Code, now codified at 11 U.S.C. § 507(a)(5) (2005). Because of the importance of the question presented, Zurich agrees that, absent Congressional intervention, the issue should be resolved by this Court. Although Congress recently overhauled the Bankruptcy Code, it did not address this issue. Hence, Zurich has determined not to oppose *certiorari*.

If the Court grants *certiorari*, we will argue that it should affirm the Fourth Circuit's decision because, as Judge King found in his concurring opinion, the applicable statutory term—"contributions to an employee benefit plan arising from services rendered"—is unambiguous, and includes premiums for workers' compensation insurance. *In re Howard Delivery Service, Inc.*, 403 F.3d 228, 238 (King, J., concurring). Hence, there is no need to resort to legislative history or other rules of construction. *Id.* at n.14; *see also Lamie v. United States Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023, 1030 (2004) (where statutory term is unambiguous, no need to consult legislative history). But even if the legislative history or other rules of construction are consulted, as Judge Shedd determined in his separate concurring opinion, the result should be the same: priority accorded the claim here. *In re Howard Delivery Service, Inc.*, 403 F.3d at 241 (Shedd, J., concurring).

Respectfully submitted,

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Joint Appendix Unavailable for Filming at this Time